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No. 96-79

In the Supreme Court of the United States

OCTOBER TERM, 1996

SANDRA JEAN DALE BOGGS, PETITIONER

v.

THOMAS F. BOGGS, HARRY M. BOGGS AND DAVID B. BOGGS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

WALTER DELLINGER
Acting Solicitor General
EDWIN S. KNEEDLER
Deputy Solicitor General
PAUL R.Q. WOLFSON
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

J. DAVITT MCATEER
Acting Solicitor of Labor
ALLEN H. FELDMAN
Associate Solicitor
NATHANIEL I. SPILLER
Deputy Associate Solicitor
JUDITH D. HEIMLICH
Attorney
Department of Labor
Washington, D.C. 20210

34 pp

QUESTION PRESENTED

The United States will address the following question:

Whether the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, preempts the application of state community property law that would require the distribution of a portion of the deceased participant's pension benefits to the heirs of the participant's predeceased spouse instead of to the participant's surviving spouse.

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INTEREST OF THE UNITED STATES

This case concerns the scope of the preemption provision of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144. The Secretary of Labor is primarily responsible for enforcing and administering Title I of ERISA. See 29 U.S.C. 1002(13), 1136(b). The United States therefore has a substantial interest in the resolution of the question presented.

STATEMENT

1. This case involves a controversy over the retirement plan benefits of Isaac Boggs. Mr. Boggs was

employed by South Central Bell for 36 years, and was a participant in his employer's retirement plans, which were covered by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.* Mr. Boggs was married to his first wife, Dorothy Boggs, for the first 30 years of his employment, until her death in 1979. Pet. App. A1, A2, A4, A14. Dorothy Boggs' will devised to Mr. Boggs one-third of her estate and a lifetime usufruct in the remaining two-thirds; she devised to respondents, her three sons, the naked or reversionary interest in the two-thirds of the estate to which Mr. Boggs had the usufruct. *Id.* at A2, A14. The Sworn Descriptive List of Dorothy Boggs' property stated that she had a one-half interest, valued at $21,194.29, in Mr. Boggs' account in the Bell Systems Savings Plan for Salaried Employees (Savings Plan). *Id.* at A2, A14-A15.

In 1980, Mr. Boggs married petitioner. Pet. App. A2, A14. Upon Mr. Boggs' retirement in 1985, during the second marriage, he received several benefits from his employer's pension plans. Specifically, Mr. Boggs received, from the Bell South Service Retirement Program, monthly annuity payments in the amount of $1,777.67 from the date he retired until he died in 1989. He also received a lump-sum distribution from the Savings Plan in the amount of $151,628.94, which he "rolled over" into an Individual Retirement Account (IRA) qualified under the Internal Revenue Code, 26 U.S.C. 408. Finally, he received 96 shares of AT&T stock from the BellSouth Employee Stock Ownership Plan (ESOP), and life insurance policies. Pet. App. A2-A3, A14.[1]

[1] The monthly annuity payments apparently were paid from the Bell South Service Retirement Program, which is a "defined benefit plan" within the meaning of 29 U.S.C. 1002(35), because the benefits received were calculated on a service and salary formula. See Stip. Doc. F-2. The ESOP stock distribution apparently came from the BellSouth Employee Stock Ownership Plan, an "individual account" or "defined contribution" plan within the meaning of 29 U.S.C. 1002(34). The ESOP, a type of benefit plan described in 29 U.S.C. 1107(d)(6), appears to meet the definition of a pension (as opposed to welfare) plan under 29 U.S.C. 1002(2)(A), because the only distribution of stock occurred at Mr. Boggs' retirement. Stip. Facts ¶ 15. The Bell Systems Savings Plan, from which Isaac Boggs received a lump sum distribution upon retirement, also appears to have been an "individual account" or "defined contribution" plan, and was clearly a pension plan. See Stip. Docs. F-1, G; Stip. Facts ¶ 11. It is that Savings Plan that was specifically mentioned in the Succession and Sworn Descriptive List of Dorothy Boggs, the predeceasing first spouse. Stip. Docs. D, E. Upon Mr. Boggs' retirement, the proceeds from the Savings Plan were placed in an Individual Retirement Account. Stip. Facts ¶ 11.

Mr. Boggs died in 1989. After his death, his monthly retirement annuity converted to a survivor annuity payable to petitioner, as the surviving spouse, for the rest of her life. See 29 U.S.C. 1055(a)(1) and (d); Pet. App. A2, A14. In addition, petitioner was the named beneficiary of the IRA and the life insurance policies. Pet. App. A2, A14.[2]

2. Two of the three respondents brought an action against petitioner in state court asserting their entitlement, under Louisiana law, to what they alleged to be the community property interest of their mother

[2] In his will, executed three months before his retirement, Mr. Boggs bequeathed the family home to petitioner outright, and also bequeathed to her a life usufruct in his separate and community property. He bequeathed to respondents the naked (reversionary) ownership of the remainder of his estate, subject to petitioner's life usufruct. Stip. Doc. A.

in Mr. Boggs' pension benefits. Pet. App. A3, A15. Louisiana's community property law provides that "[e]ach spouse owns a present undivided one-half interest in the community property." La. Civ. Code Ann. art. 2336 (West 1985).[3] In Louisiana, pension benefits acquired during the marriage are generally considered community property that vests equally in both spouses when acquired, even if those benefits are not payable until after the marriage ends. Pet. App. A4, A20. Respondents' state court action sought an accounting and payment based on a portion of the monthly retirement annuity paid to Mr. Boggs until his death, the monthly survivor annuity payable to petitioner for the rest of her life, the ESOP shares of AT&T stock, and the IRA. *Id.* at A3.

Petitioner then brought this action in federal district court pursuant to Section 502(a)(1)(B) of ERISA, 29 U.S.C. 1132(a)(1)(B). Petitioner sought a declaratory judgment that ERISA preempts the application of Louisiana's community property and succession laws to the assets and benefits in Mr. Boggs' pension plans and IRA. Pet. App. A3-A4. On summary judgment, the district court held that "ERISA does not preempt Louisiana's community

[3] Community property is defined to include "property acquired during the existence of the legal regime through the effort, skill or industry of either spouse," "property acquired with community things," and "natural and civil fruits of community property." La. Civ. Code Ann. art. 2338 (West 1985). We assume for purposes of this case that, under Louisiana law, Dorothy Boggs had a one-half interest in the assets of Mr. Boggs' pension plan during her lifetime, and that she devised the reversionary interest in that one-half interest to her children.

property law," *id.* at A5, and entered judgment for respondents, *id.* at A10-A11.

3. A divided panel of the court of appeals affirmed. Pet. App. A13-A24. The court noted that "ERISA was enacted to protect the interests of the beneficiaries of employee benefit plans," *id.* at A16, and acknowledged that "Congress attempted to guarantee uniformity when it included ERISA's broad preemption provision," 29 U.S.C. 1144. Pet. App. A17. The court also acknowledged that the preemption provision "has been interpreted broadly" and may supersede a state law even if that law "is not designed to regulate in the area of employee benefits or if its effect is indirect." *Ibid.* The court nonetheless noted that ERISA's preemption provision "is not without limits," *ibid.*, and that the courts "must be guided by respect for the separate spheres of governmental authority preserved in our federalist system," *id.* at A18. The court found it significant that "[t]he area of domestic relations has long been the domain of the states," and that Louisiana's community property system is an "honored civilian institution," *id.* at A19.

From those premises, the court concluded that the application of state law to give Dorothy Boggs (and her devisees) a one-half interest in Isaac Boggs' pension plan assets does not "relate to" an ERISA plan, within the meaning of 29 U.S.C. 1144. The court stated that "[a] state community property system that affects what a plan participant does with his benefits after they are received does not impermissibly intrude on the mandates ERISA imposes on plan administrators." Pet. App. A20. The court observed that respondents sought "[n]othing * * * from the plan or its fiduciary," that "[n]o duty will be imposed on the plan or the administrator," and that "[b]enefits

will continue to be paid to the beneficiary in the manner provided in the plan." *Id.* at A21. The application of state law in this case, the court concluded, "relates not to the plan but to the disposition of the proceeds only after payment to the designated beneficiary." *Ibid.*

The court rejected the argument that ERISA's anti-alienation provision, 29 U.S.C. 1056(d)(1), supports preemption of state law that divides, or creates competing ownership interests in, ERISA benefits. Initially, the court reasoned, it is ERISA's "general preemption provision," 29 U.S.C. 1144(a), that "controls any determination of the boundaries of ERISA preemption." Pet. App. A22. The court also concluded that the anti-alienation clause was intended only "to prevent plan participants from recklessly divesting themselves of plan benefits before retirement," and "was not intended to affect support obligations among the members of a family." *Ibid.* In addition, the court reasoned, under state law Dorothy Boggs had an "ownership" interest in the pension benefits that "vest[ed] immediately," and thus "no transaction prohibited by the ERISA spendthrift provision" would occur if Dorothy Boggs were found to have an ownership interest in those benefits. *Id.* at A22-A23. Nor, the court stated, did the anti-alienation clause bar Dorothy Boggs' bequest to respondents because "[t]his final alienation, two steps removed from the disbursement of benefits, is not a violation" of ERISA's provisions. *Id.* at A23.[4]

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[4] The court of appeals also rejected petitioner's reliance on 26 U.S.C. 408, which governs IRAs and was enacted as part of ERISA. Pet. App. A24. Section 408(g) states that the provisions governing IRAs in Section 408 of the Internal Revenue Code shall be applied "without regard to any community property laws." 26 U.S.C. 408(g). In the court's view, Section 408 governs "the trust relationship between the government and the [plan] participant" concerning the disbursement of IRA funds but could not "reasonably be interpreted to intervene in the marital relationship and divest one spouse of ownership rights," and thus could not affect the participant's "later obligation to his spouse to account for her portion of the benefits." Pet. App. A24.

Judge King dissented. Pet. App. A25. She would have held that ERISA preempts the application of state law "that would operate here to divest a participant's widow of a portion of the benefits from pension plans that she would be entitled to receive under ERISA." *Ibid.* Five days after the petition for a writ of certiorari was filed in this Court, six judges of the court of appeals filed a dissent from the court of appeals' failure to rehear the case en banc. Pet. Supp. App. A42-A75. Those dissenting judges concluded that "ERISA preempts Louisiana community property law to the extent that such law would purport to recognize and enforce an interest of the heirs of a nonparticipant spouse in an ERISA-qualified pension plan." *Id.* at A75.

SUMMARY OF ARGUMENT

ERISA preempts the application of state community property law to the benefits of a pension plan. ERISA itself provides some substantive law concerning entitlement to pension benefits, and ERISA otherwise leaves the formulation of pension benefits to the plan and the employer that establishes the plan. State law that purports to require the ownership or distribution of such benefits in a particular manner therefore "relate[s] to" the pension plan, within the

meaning of 29 U.S.C. 1144(a). The application of state community property laws to pension benefits could also interfere with plan administration. ERISA's broad preemption clause in Section 1144(a) therefore supersedes such state laws.

ERISA contains three provisions directly governing entitlement to plan benefits. First, the statute's anti-alienation provision, 29 U.S.C. 1056(d)(1), is intended to ensure that benefits are not diverted from the participant or beneficiary who is intended to receive them. Second, ERISA requires that most pension plans make provision for surviving spouses of plan participants, by ensuring that such surviving spouses receive an annuity or the entitlement to undistributed sums from a pension plan account. 29 U.S.C. 1055(a). Third, ERISA makes special provision for benefits to be paid to divorced spouses and dependent children of plan participants, by expressly permitting such ex-spouses and children to enforce a qualified domestic relations order (QDRO) against the plan, notwithstanding the anti-alienation and preemption provisions. 29 U.S.C. 1056(d)(3), 1144(b)(7). The QDRO provision does not extend to predeceased spouses or their heirs. Because ERISA thereby governs entitlement to pension benefits, any state law that would divide, or grant competing ownership interests in, such benefits is preempted.

In this case, the application of state community property law would directly conflict with ERISA's provision for a survivor annuity payable to petitioner. That annuity was mandated, as a matter of substantive federal law, by 29 U.S.C. 1055(a). Respondents claim a share of that annuity, by virtue of their inherited community property claim; any funds to

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ARGUMENT

ERISA PREEMPTS STATE LAW REQUIRING THE DISTRIBUTION OF PENSION BENEFITS TO PERSONS OTHER THAN THE PARTICIPANT, THE PARTICIPANT'S DESIGNATED BENEFICIARY, OR A STATUTORY BENEFICIARY SPECIFICALLY DESIGNATED BY ERISA

This case involves a matter that is at the heart of ERISA: the payment of retirement benefits from an ERISA plan. The outcome of this case will determine who is entitled to receive pension benefits under employee benefit plans governed by ERISA. Thus, this is unquestionably not a case in which application of state law would affect employee benefit plans in a "tenuous, remote, or peripheral" manner. See *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 100 n.21 (1983); cf. *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 115 S. Ct. 1671, 1680 (1995). It involves, rather, the very subject to which ERISA itself is addressed.

The court of appeals believed that ERISA does not preempt the application of Louisiana community property law to the benefits at issue in this case because state law would not impose any particular duties on the plan *administrator*, such that the federal interest in uniformity of plan administration would be implicated. Pet. App. A20-A21. While we disagree with the court of appeals on that point (see pp. 24-25, *infra*), the more fundamental point is that entitlement to plan benefits is a subject of federal concern specifically addressed by ERISA. It is, therefore, a field in which state law is superseded, by

operation of ERISA's broad preemption provision, 29 U.S.C. 1144.[5]

1. ERISA establishes the regulation of employee benefit plans "as exclusively a federal concern." *Travelers*, 115 S. Ct. at 1677. ERISA "imposes participation, funding, and vesting requirements on pension plans"; it "sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans"; and it includes "a carefully integrated civil enforcement scheme that is one of the essential tools for accomplishing the stated purposes of ERISA." *Ingersoll-Rand Co.* v. *McClendon*, 498 U.S. 133, 137 (1990) (internal quotation marks omitted).

ERISA governs, with breadth and detail, the rights of pension plan participants and beneficiaries, as well as the obligations of the plan with respect to the payment of benefits.[6] Among those rights is the right of

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[5] Section 1144(a) provides in pertinent part: "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title."

[6] ERISA defines a "participant" as "any employee or former employee * * * who is or may become eligible to receive a benefit of any type from an employee benefit plan * * *, or whose beneficiaries may be eligible to receive any such benefit." 29 U.S.C. 1002(7). It defines a "beneficiary" as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. 1002(8). An "employee pension benefit plan" or "pension plan" is "any plan, fund, or program" that is "established or maintained by an employer" and "provides retirement income to employees" or "results in a deferral of income by employees." 29 U.S.C. 1002(2)(A).

the participant and beneficiary, protected by ERISA's anti-alienation provision, actually to receive the benefits from the plan. And among the rights and obligations are a number of carefully focused provisions requiring that pension benefits be paid, in specific circumstances, to particular individuals—surviving spouses, divorced spouses, and dependent children.

First, ERISA specifies that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. 1056(d)(1); see also 26 U.S.C. 401(a)(13) (parallel Internal Revenue Code provision). That anti-alienation provision was intended to ensure that the participant in, or beneficiary of, a retirement plan actually receives the benefits to which he or she is entitled. See H.R. Rep. No. 807, 93d Cong., 2d Sess. 68 (1974) (anti-alienation provision ensures that "the employee's accrued benefits are actually available for retirement purposes"). While the anti-alienation provision is directly concerned with preserving plan assets before their distribution to the participant or beneficiary, the manifest import and underlying policy of the clause is that pension benefits belong to the participant or to the beneficiary, and may not be diverted to others. Congress intended by that provision "to safeguard a stream of income for pensioners (and their dependents)." *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990); see also *id.* at 371-372.

Second, ERISA, as amended by the Retirement Equity Act of 1984 (REA), Pub. L. No. 98-397, 98 Stat. 1426, establishes important rights to pension benefits for the surviving spouse of a participant. Section 205(a) of ERISA, as amended by the REA, requires all

defined benefit plans, and most defined contribution plans, to provide an annuity for such a surviving spouse. See 29 U.S.C. 1055(a); see also 26 U.S.C. 401(a)(11), 417(a) (parallel Internal Revenue Code provisions). If a married vested participant retires before death, the participant and spouse must receive a "qualified joint and survivor annuity," to protect the spouse's survivor interest. 29 U.S.C. 1055(a)(1). If a married vested participant dies before retirement, the surviving spouse must receive a similar "qualified preretirement survivor annuity." 29 U.S.C. 1055(a)(2). A defined contribution plan that does not guarantee such an annuity to a surviving spouse must provide the surviving spouse an alternative form of protection—specifically, the entitlement to any accrued benefits remaining in the plan at the time of the death of the participant. 29 U.S.C. 1055(b)(1)(C)(i).

Those protective provisions for surviving spouses were added by Congress in 1984 to address the problem of the surviving spouse who is "unprepared financially for the death of the participant (and the ending of the participant's annuity)," and who might receive no benefits at all after the death of the participant. H.R. Rep. No. 655, 98th Cong., 2d Sess., Pt. 1, at 28 (1984) (1984 House Report). Surviving spouses cannot be divested of their survivor benefits unless they expressly waive their rights to those benefits in notarized written statements. 29 U.S.C. 1055(c)(2).

Third, ERISA, as amended by the REA, has a highly specific provision intended to ensure equitable treatment of *divorced* spouses and certain dependents (such as minor children receiving child support) of participants in pension plans. ERISA requires a plan to pay a participant's pension benefits to an alternate

payee in accordance with a state "domestic relations order," if that order meets the detailed requirements that ERISA prescribes for a "qualified domestic relations order" (QDRO). 29 U.S.C. 1056(d)(3). If a valid domestic relations order meeting all the requirements of Section 1056(d)(3) is determined by the plan to be qualified, then the beneficiary of the QDRO becomes, in effect, a beneficiary of the plan as well. 29 U.S.C. 1056(d)(3)(J) and (K).[7] ERISA exempts from the anti-alienation clause only those QDROs that meet the requirements of 29 U.S.C. 1056(d)(3), and also expressly saves such QDROs from preemption, 29 U.S.C. 1144(b)(7). See *Guidry*, 493 U.S. at 376 n.18; *Mackey* v. *Lanier Collection Agency & Service*, 486 U.S. 825, 838 (1988).[8]

The "limited exception" to the anti-alienation provision for QDROs, see S. Rep. No. 575, 98th Cong., 2d

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[7] Section 1056(d)(3)(A) provides that "[e]ach pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order." A "qualified domestic relations order" is defined as a "domestic relations order" that "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan." 26 U.S.C. 1056(d)(3)(B)(i)(I). ERISA defines a "domestic relations order" as an order that "relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant" and is "made pursuant to a State domestic relations law (including a community property law)." 29 U.S.C. 1056(d)(3)(B)(ii).

[8] The amendments to ERISA made by the REA—which secure the surviving spouse's rights, create the QDRO exception to the anti-alienation clause, and save state laws providing for QDROs from preemption—were all in effect when Mr. Boggs retired in September 1985.

Sess. 19 (1984), was intended to address the serious problem facing divorced spouses who are economically dependent on their former spouses (the plan participants), as well as children who are similarly dependent on a parent-participant. See 1984 House Report 30-31. To ensure that ERISA does not interfere with alimony, child support, or the equitable distribution of property in a divorce, Congress expressly permitted the division of ERISA plan benefits pursuant to a QDRO. Congress made clear, however, that QDROs must "meet specific requirements if they are to be honored by the plan," in order to "minimize the burden on the plan and eliminate confusion over what the court is ordering." *Id.* at 39. Domestic relations orders that do not meet the specific requirements for a QDRO are not exempted from the anti-alienation clause. See 29 U.S.C. 1056(d)(3)(A) (stating that the anti-alienation clause in Section 1056(d)(1) "shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that [it] shall not apply if the order is determined to be a [QDRO]"). And only QDROs meeting those requirements are also exempted from preemption. See p. 14, *supra*; S. Rep. No. 575, 98th Cong., 2d Sess. 19 (1984).

ERISA thus includes special provisions to secure interests in pension benefits of surviving spouses, divorced spouses, and certain dependents of participants, in light of the particular, serious financial hardships faced by those persons. ERISA does not, however, contain any similar provision establishing or recognizing a right to plan benefits on the part of the estate of a spouse who predeceases the participant, or in that predeceased spouse's heirs. Moreover,

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entitlement to the surviving spouse annuity required by ERISA.

2. Under established principles, ERISA preempts state law when ERISA itself provides law governing an area. See U.S. Br. at 12-14, *De Buono* v. *NYSA-ILA Medical & Clinical Servs. Fund*, No. 95-1594.[10] That basis for preemption applies to this case. Because ERISA itself provides law concerning entitlement to plan benefits—by ensuring that participants and designated beneficiaries shall receive those benefits, and by making specific provision in the Act for surviving spouses, divorced spouses, and certain dependents—state community property laws necessarily "relate to" an ERISA plan when applied to plan benefits. Such laws are therefore preempted. See 29 U.S.C. 1144(a).[11]

a. It is clear that Louisiana community property law is preempted insofar as it may apply to petitioner's survivor annuity. Indeed, that state law conflicts directly with ERISA's provision for the payment of a survivor annuity to petitioner. ERISA specifies persons to whom a retirement annuity must be paid during a participant's lifetime and after his or her death. Section 205(a)(1) of ERISA provides that, in the case of a married participant who receives a retirement annuity, "the accrued benefit payable to

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[10] We are providing the parties with a copy of our brief in *De Buono*.

[11] The analysis and conclusions that follow are not dependent, however, on the fact that the state-law claims in this case arose under a community property law. The same result would obtain under any state law that purports to recognize, by operation of domestic relations or testamentary law, a beneficial interest in an ERISA plan superior to the designation of a beneficiary made pursuant to ERISA or the terms of a plan.

such participant shall be provided in the form of a qualified joint and survivor annuity," 29 U.S.C. 1055(a)(1), *i.e.*, an annuity "for the life of the participant with a survivor annuity for the life of the spouse." 29 U.S.C. 1055(d)(1). The participant may not elect to waive the qualified joint and survivor annuity form of benefit unless "the spouse of the participant consents in writing to such election," and the participant has designated "a beneficiary (or a form of benefits) which may not be changed without spousal consent." 29 U.S.C. 1055(c)(1) and (2). Under ERISA, only Isaac Boggs was entitled to receive the "joint and survivor annuity" during his lifetime. Because petitioner did not consent to any waiver of that annuity, she, and she alone, is entitled now to receive the survivor annuity, a necessary consequence of her having been married to the participant at the time of his retirement and her surviving his death.[12]

ERISA makes no similar provision for payment of an annuity to the estates or heirs of predeceased spouses of plan participants, or for the children of plan participants. There might, of course, be plausible reasons grounded in policy why Congress in the future might choose to permit the federal laws governing pension benefits to recognize such an interest. It must be borne in mind, however, that such an interest could be recognized only at the expense of the specific class of persons (surviving spouses) that Congress chose to protect in the REA when it re-

[12] Indeed, the survivor annuity came into existence only because Mr. Boggs remarried. Had Mr. Boggs not remarried, the survivor annuity in which respondents claim an interest would not exist.

quired the survivor annuity. In a case like this one, any funds for payments to the children or other heirs of a predeceased spouse would come, in effect, from the survivor annuity payable to the surviving spouse.[13] And since "[p]ensions are designed for the benefit of the living," *Ablamis* v. *Roper*, 937 F.2d 1450, 1457 (9th Cir. 1991), it is not surprising that Congress chose to prefer the interest of the surviving spouse of a retired plan participant, who may have no other source of income, over that of the heirs of a predeceased spouse, including the participant's own children, who may have a lifetime of gainful employment ahead of them. As Judge Wiener noted in his dissent from denial of rehearing en banc:

> Ever since the enactment of REA, ERISA has exhibited an extraordinary interest in protecting the surviving spouse of the participant employee, going so far as to trump the participant employee's own beneficiary designation if, absent spousal consent, the designee is not the participant's surviving spouse. By statutory enactment, then, Congress has elected to designate for each and every participant in an ERISA plan precisely who the "natural objects of his or her bounty" must be. And, in making that election, Congress has opted to elevate the nonparticipant spouse (or, in the case of divorce, the nonparticipant ex-spouse) above such presumptive candidates as the descen-

[13] Cf. *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 585 (1979): "Congress has fixed an amount thought appropriate to support an employee's old age and to encourage the employee to retire. Any automatic diminution of that amount frustrates the congressional objective."

dants or other heirs, legatees or assigns of either spouse.

Pet. Supp. App. A64.

b. ERISA also preempts the application of state community property law to the assets of Isaac Boggs' defined contribution plans (*i.e.*, his stock and savings plans). This is so even though Louisiana community property law does not single out pension plan benefits, but makes those benefits subject to the State's general community property regime.[14] As this Court has noted on several occasions, under ERISA's preemption provision, which is "'conspicuous for its breadth[,]' * * * a state law may 'relate to' a benefit plan and thereby be pre-empted, even if the law is not specifically designed to affect such plans." *Ingersoll-Rand*, 498 U.S. at 138-139; see also *Pilot Life Ins. Co.*

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[14] As we understand this case, respondents claim to be entitled, collectively, to a share in Isaac Boggs' pension benefits by operation of Louisiana's general community property statute, La. Civ. Code Ann. art. 2338 (West 1985). Article 2338 provides that the community property includes "all other property not classified by law as separate property." *Ibid.* Louisiana law elsewhere provides specifically that an employee who is predeceased by his spouse shall enjoy a legal usufruct, during his life, of his spouse's community property interest in any recurring retirement benefits. La. Civ. Code Ann. art. 890.1 (West Supp. 1996). That provision does not appear to affect the outcome of this case, however, because Dorothy Boggs in any event bequeathed to Isaac Boggs outright the maximum permitted by law, and the lifetime usufruct of the balance of her estate, necessarily including any interest she had in his pension benefits. Accordingly, any claim of respondents to a share of Isaac Boggs' pension benefits appears to arise solely out of the *residual* interest devised to them by their mother. Their mother's interest to that extent arose under Article 2338.

v. *Dedeaux*, 481 U.S. 41, 47-48 (1987); *Shaw*, 463 U.S. at 98; *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981). The application of Louisiana's community property law to the benefits payable under an ERISA plan "relate[s] to" that plan "in the normal sense of the phrase, [in that] it has a connection with" the plan, *Pilot Life*, 481 U.S. at 47. Just as the application of Mississippi's general common law of tortious breach of contract, as applied to the processing of benefits under an ERISA plan, "relate[d] to" such a plan and "undoubtedly [met] the criteria for pre-emption" under Section 1144(a), see *Pilot Life*, 481 U.S. at 48, so too here, the application of Louisiana's general community property law to a determination of entitlement to plan benefits has an obvious connection with plans.[15]

Of course, the application of generally applicable state law to an ERISA plan may not result in pre-emption when an ERISA plan engages in an activity that is subject to traditional and generally applicable state regulation, and when that regulation is tangential to the central concerns of ERISA. See *Travelers*, 115 S. Ct. at 1683 (ERISA plan not immune from surcharges on hospital costs); cf. *Mackey*, 486 U.S. at 830-838 (employee welfare plans not exempt from general state garnishment statutes); see also U.S. Br. at 19-23, *De Buono* v. *NYSA-ILA Medical & Clinical Servs. Fund*, No. 95-1594. But this is not a case in which the application of the state law to the

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[15] The Court has said that "[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw*, 463 U.S. at 96-97; see *id.* at 97 n.16 (citing *Black's Law Dictionary* 1158 (5th ed. 1979)).

ERISA plan touches the concerns of ERISA only tangentially. Rather, the application of community property law to a participant's pension benefits relates directly to the purpose for which ERISA plans are put in place: the provision of benefits to employees.

c. The conclusion that ERISA preempts the application of community property law to pension plan benefits is reinforced by ERISA's anti-alienation provision, 29 U.S.C. 1056(d)(1). As we have explained (see p. 12, *supra*), that provision ensures that pension benefits are not diverted before they are distributed to the participant or beneficiary for whom they are intended. The court of appeals believed, however, that application of Louisiana's community property law would not interfere with the anti-alienation clause because Dorothy Boggs' ownership interest in her husband's pension benefits vested immediately, and therefore no transaction was needed to convey ownership to her. Pet. App. A22-A23.[16]

[16] The court of appeals also suggested that Section 1056(d)(1) could have no bearing on this case because the pension benefits that respondents claim have already been distributed. Pet. App. A23. While it may be true that the anti-alienation clause applies strictly only to prevent attachment of benefits before they are distributed, and not after they are received by the participant or beneficiary, the court of appeals' reasoning overlooks the important point that the ownership interest claimed by respondents must have arisen before the benefits had been distributed by the plan. At that time, however, Dorothy Boggs would have been prevented by Section 1056(d)(1) from using legal process to protect any state-law ownership interest she might have had in those benefits. See pp. 23-24, *infra*. The fact that respondents' claim based on their mother's interest was not brought until after the benefits had been distributed to their father is therefore not dispositive

We disagree with that reasoning, on three counts. First, application of community property law to create ownership interests in pension benefits surely "relate[s] to" the purpose for which the anti-alienation provision was put in place (preventing the diversion of such benefits from those designated by the participant or ERISA itself to receive them), and is therefore preempted. Indeed, 29 U.S.C. 1056(d)(3)(A) makes clear that the anti-alienation clause in Section 1056(d)(1) applies to the "creation" or "recognition" of rights in benefits, not merely the "assignment" of such rights.

Second, even if the application of Louisiana community property law does not contradict Section 1056(d)(1) directly, it still "relate[s] to" an ERISA plan in the areas covered by Section 1056, and is therefore preempted. See *Ingersoll-Rand*, 498 U.S. at 139 (state law need not be in conflict with ERISA to be preempted); *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985) (same); *Shaw*, 463 U.S at 98-99 (same).

Third, even if Dorothy Boggs might under state law have been considered a co-owner of the pension benefits, her inability (because of Section 1056(d)(1)) to use legal processes to execute against those

of the legal issue. There is also no support for the court of appeals' suggestion that the anti-alienation provision was not intended "to alter traditional familial and support obligations," as opposed to providing protection against participants' "own financial improvidence in dealing with third parties." Pet. App. A5 n.1. To the contrary, the anti-alienation provison is "unqualified by the statutory text." *Guidry*, 493 U.S. at 376. And the REA's narrowly tailored exceptions to that provision refute the notion that it does not *generally* apply to family members, as well as others.

benefits obviously constitutes "a severe limitation on the nature of any ownership interest she might otherwise enjoy under state law." See *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 586 n.19 (1979); see also *Ridgway* v. *Ridgway*, 454 U.S. 46, 61 (1981); cf. *Guidry*, 493 U.S. at 371-372 (constructive trust on pension benefits violates ERISA's anti-alienation clause). As a result, quite aside from the more general preemption principles discussed above, the anti-alienation provision of ERISA overrides Dorothy Boggs' community property interest in Isaac Boggs' pension benefits.

d. Community property laws are also preempted in cases like this one because application of such laws to pension benefits could interfere with the administration of ERISA plans. Cf. *Shaw*, 463 U.S. at 99; *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1, 9-12 (1987). Plans have an interest in knowing who the beneficiaries are, and in not being subject to suit by other persons asserting claims to the pension benefits. Although the court below stressed that the dispute is "between successive spouses[] and their heirs," Pet. App. A20, and that respondents sought nothing "from the plan or its fiduciary," *id.* at A21, there is no reason to believe that the community property interests that it recognized would be vindicated only after the participant or beneficiary has died. The next heirs in respondents' situation may well bring suit against the plan itself. Competing heirs from different states, asserting conflicting interests under various state laws, might also bring actions against the plan. The plan's interest, protected by ERISA, in avoiding a multiplicity of possibly conflicting state regulation is therefore substantially implicated in this case, and independently requires preemption. Cf.

Fort Halifax, 482 U.S. at 11; *Travelers*, 115 S. Ct. at 1677-1678.

3. Preemption of state law in this case is consistent with a line of similar cases in which the Court has held that various federal programs making benefits or assets available to specific individuals preempted the application of state domestic relations laws that would have divided those benefits or assets among family members, or would have created competing ownership interests.[17] In those cases, the Court found that statutory provisions designating specific beneficiaries of the federal program, anti-attachment provisions, or both in combination, required the conclusion that the operation of state law to divide or create competing ownership interests in the federal benefits or assets was preempted. Those cases involved benefits that were created by federal law, whereas this case involves benefits created by private ordering between employers and employees. That distinction is of no moment here, however, given the broad and exclusive sweep of federal law in the regulation of pension plans. See *Pilot Life*, 481 U.S. at 46.

The Court has charted a consistent course in this area. In *Wissner* v. *Wissner*, 338 U.S. 655 (1950), the Court held that California community property law could not be applied to the proceeds of a national servicemember's life insurance policy, where the officer had designated his mother rather than his wife

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[17] See *Mansell* v. *Mansell*, 490 U.S. 581 (1989); *Ridgway* v. *Ridgway*, 454 U.S. 46 (1981); *McCarty* v. *McCarty*, 453 U.S. 210 (1981); *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979); *Free* v. *Bland*, 369 U.S. 663 (1962); *Wissner* v. *Wissner*, 338 U.S. 655 (1950); cf. *Rose* v. *Rose*, 481 U.S. 619 (1987).

as the beneficiary of the policy. The Court stressed that the officer had a federal statutory right to designate the beneficiary of his policy, and that, by statute, payments to the named beneficiary were exempt from attachment. *Id.* at 658-659. In *Free* v. *Bland*, 369 U.S. 663 (1962), the Court held that the application of Texas community property law to the ownership of United States Savings Bonds was preempted; the Court noted that Treasury Department regulations specifically allowed savings bonds to pass by right of survivorship if so elected by the bondholder, and that no judicial determination impairing that right of survivorship would be recognized. *Id.* at 667-668. In *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979), the Court ruled that California community property law could not be applied, in a divorce decree, to divide an expectancy in receiving federal railroad retirement benefits. The Court observed that the benefits were protected from attachment under a statutory anti-assignment provision, subject only to a limited exception for child support and alimony (but not division of property). *Id.* at 576-577. Division of the benefits, the Court concluded, would "deprive [the worker] of a portion of the benefit Congress * * * indicated was designed for him alone." *Id.* at 583.

In *McCarty* v. *McCarty*, 453 U.S. 210 (1981), the Court concluded that community property law could not be applied to military retirement pay; it stressed that Congress had made retirement pay a personal entitlement of the retired officer, a conclusion reinforced by the fact that retirement pay could not be attached or assigned, subject to a limited exception

for alimony and child support. *Id.* at 228-230.[18] Similarly, in *Ridgway* v. *Ridgway*, 454 U.S. 46 (1981), the Court found that a constructive trust on the proceeds of a servicemember's life insurance policy, imposed by a state divorce court to satisfy property settlement obligations under a divorce decree, conflicted with the relevant statute's anti-attachment provision, which was enacted to "ensure[] that the benefits actually reach the beneficiary." *Id.* at 60-61 (quoting *Hisquierdo*). And most recently, in *Mansell* v. *Mansell*, 490 U.S. 581 (1989), the Court similarly concluded that California community property law could not be applied, in a divorce proceeding, to military retirement pay that was waived by the retiree in order to receive disability benefits.

While the provisions under review in those cases differed from each other and from those in ERISA in certain respects, the Court found particularly significant, in each case, that Congress had either required or permitted the designation of a specific beneficiary, that Congress had protected the benefits from alienation or attachment, or both. Statutory designated-beneficiary provisions demonstrate that "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other." *Wissner*, 338 U.S. at 658; see *Ridgway*, 454 U.S. at 52 (federal statute "establishe[d] a specified 'order of precedence' "). Anti-alienation clauses protect that congressional policy from disruption by

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[18] In *McCarty*, the Court specifically noted, with disapproval, the fact that "at least one court (in a noncommunity property State) has gone so far as to hold that the heirs of the ex-spouse may even inherit her interest in military retired pay." 453 U.S. at 233.

state law that would operate to secure an interest in other persons in the assets or proceeds subject to federal law. See *Ridgway*, 454 U.S. at 60; *Hisquierdo*, 439 U.S. at 583-584, 588; *Wissner*, 338 U.S. at 658-659; *Free*, 369 U.S. at 669.[19]

In this case, Congress has similarly spoken with "force and clarity," by providing that surviving spouses and living ex-spouses shall have an interest in a participant's pension plan benefits (29 U.S.C. 1055(a), 1056(d)(3)), and by protecting the payment of benefits to participants, designated beneficiaries, and statutory beneficiaries through an anti-alienation provision (29 U.S.C. 1056(d)((1)). Enforcement of respondents' state-law rights to inherit their mother's asserted community property interest in the pension plan benefits cannot be reconciled with those considered policy choices by Congress. Accordingly, ERISA preempts the application of state community property law to benefits of an ERISA-covered pension plan.[20]

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[19] The only recent case pointing in the opposite direction is *Rose* v. *Rose*, 481 U.S. 619 (1987). In that case, the Court held that a state court had jurisdiction to hold a disabled veteran in contempt for failing to pay child support out of his veteran's disability benefits. The Court's holding rested crucially on its conclusion that Congress had intended veteran's benefits to be available for the support of veterans' families, as well as the veterans themselves. *Id.* at 630-631, 634. In ERISA, similar protection for support for dependent family members is found in the carefully tailored QDRO provisions added by the REA, which, as we have explained, do not apply to this case. See note 9, *supra*.

[20] We agree with petitioner (Pet. Br. i, 24-26) that the preemption of Louisiana community property law under 29 U.S.C. 1144 applies equally to the funds that Mr. Boggs rolled over into an IRA. As we have explained above, any state-law claim to the funds in the savings plan that respondents may have inherited from their mother is superseded by ERISA. Those funds were still in the ERISA-covered savings plan when Dorothy Boggs died, and were rolled over into the IRA only later, after Isaac Boggs retired. The community property regime between Isaac and Dorothy Boggs terminated upon Dorothy's death, see La. Civ. Code Ann. art. 2356 (West Supp. 1996), and so neither Dorothy Boggs nor her devisees could have acquired a community property interest in the IRA after Dorothy Boggs' death. Nothing in 26 U.S.C. 408 suggests that a community property interest could nevertheless spring into being, notwithstanding the absence of any such interest when the funds were in the ERISA plan itself, merely because Mr. Boggs placed his Savings Plan funds into an IRA account. We do not understand petitioner to be arguing that, if 29 U.S.C. 1144 does not preempt the application of Louisiana community property law in this setting, such that respondents could have claimed an interest through their mother to a share in the funds when they were in the Savings Plan, 26 U.S.C. 408 would intervene as an independent basis for preemption, once the funds were placed in the IRA.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General

EDWIN S. KNEEDLER
Deputy Solicitor General

PAUL R.Q. WOLFSON
Assistant to the Solicitor General

J. DAVITT MCATEER
Acting Solicitor of Labor

ALLEN H. FELDMAN
Associate Solicitor

NATHANIEL I. SPILLER
Deputy Associate Solicitor

JUDITH D. HEIMLICH
Attorney
Department of Labor

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